

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

COMPLAINT NO. 98-506

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
BIGNAMI CHILDREN'S TRUST,  
dba BRENTWOOD FARMS  
TEHAMA COUNTY

This complaint is issued to Bignami Children's Trust dba Brentwood Farms (hereafter Discharger) based on a finding of violation of Waste Discharge Requirements Order No. 95-222, and Cleanup and Abatement Order No. 97-720, pursuant to the provisions of the California Water Code Sections 13385 and 13350 which authorize the imposition of Administrative Civil Liability penalties for violation of Waste Discharge Requirements and Cleanup and Abatement Orders, respectively.

The Executive Officer finds, with respect to the Discharger's acts or failure to act, the following:

1. The Discharger operates a 650 Animal Unit Dairy in southern Tehama County with surface drainage to Rice Creek, aka Burch Creek, a tributary to the Sacramento River. Manure wastewater from the facility is discharged to percolation/evaporation ponds.
2. On 8 June 1998, staff received a complaint from Bruce Jensen, an adjacent land owner to the north of the dairy. Mr. Jensen stated that a discharge of manure wastewater from the Discharger's property was entering his property. An inspection by staff on 9 June 1998 revealed that the ephemeral stream passing through the Discharger's property was heavily laden with manure wastewater at the point where it entered the Jensen property. Analysis revealed very high concentrations of BOD, COD, EC, and Ammonia. A plume of contamination was observed in a tributary of Rice Creek, at the drainage entry point, approximately 1.5 miles downstream.
3. An aerial inspection on 10 June 1998 revealed evidence of a discharge from the manure wastewater pond to the ephemeral drainage. The discharge appeared to be in progress at the time of the aerial inspection but was not confirmed by a ground inspection.
4. An inspection conducted 11 June 1998 revealed that heavy rain the previous night had caused the ephemeral drainage to flow through the wastewater pond causing the contents of the pond to enter the drainage further downstream. Samples of the drainage taken by staff during the inspection revealed elevated levels of pollutants associated with manure waste, including concentrations of ammonia considered to be toxic to aquatic life.
5. Staff obtained rainfall data from the National Weather Service, Red Bluff, which showed 0.06 inches on 9 June 1998, and 0.84 inches on 11 June 1998. A 25-year, 24-hour storm event for this area is 4.0 inches.
6. On 22 September 1995, the Central Valley Regional Water Quality Control Board (hereafter Board) adopted order No. 95-222 prescribing waste discharge requirements for Bignami Children's Trust, dba Brentwood Farms.

7. Order No. 95-222 states, in part:

"A.1. Except for runoff which results from a storm exceeding a 25-year, 24-hour frequency, the discharge of water containing animal waste and feed waste from property under the control of the Discharger is prohibited."

8. The Discharger has a history of violations of waste discharge requirements. During each of the previous two years, manure waste has been discharged from the facility. On 17 December 1997, the Executive Officer issued Cleanup and Abatement Order No. 97-720 to the Discharger for violations of Order No 95-222, Prohibition A.1. The Order required the Discharger to:

"Abate, forthwith, the direct discharge of animal and manure wastewater to surface waters and property not under your control."

9. The discharge of manure wastewater from the percolation evaporation pond to the tributary to Rice Creek is a violation of Waste Discharge Requirements Order No. 95-222 and Cleanup and Abatement Order 97-720.

10. California Water Code Section 13385 states the following:

"(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):

(2) Any waste discharge requirements or dredged and fill material permit.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter."

"(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

11. California Water Code Section 13350 states the following:

- “(a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, may be liable civilly in accordance with subdivision (d), (e), or (f).
- (d) When there is a discharge, and a cleanup and abatement order is issued pursuant to Section 13304, liability shall be imposed as follows:
  - (1) Civil liability may be administratively imposed by a regional board pursuant to Article 2.5 (commencing with Section 13323) for a violation of this section in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.”

12. For the two days of discharge documented by staff, the maximum administrative civil liability which can be imposed by the Board under Water Code Section 13385 is twenty thousand dollars (\$20,000). The total volume of manure wastewater discharged to the tributary to Rice Creek was not possible to measure; therefore, a penalty of ten dollars (\$10) per gallon cannot be assessed. For the two days of discharge documented by staff, the maximum civil liability which can be imposed by the Board under Water Code Section 13350 is ten thousand dollars (\$10,000). Liability is not recoverable under both Section 13350 and 13385.

BIGNAMI CHILDREN'S TRUST, dba BRENTWOOD FARMS, IS HEREBY GIVEN NOTICE THAT:

1. I am proposing that an Administrative Civil Liability be imposed in the amount of ten thousand dollars (\$10,000). In determining the amount of civil liability, I have taken into consideration the following factors: the nature, circumstance, extent, and the gravity of the violation or violations; whether the discharge is susceptible to cleanup or abatement; with respect to the violator, the ability to pay, the ability to remain in business; any voluntary cleanup efforts undertaken; prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations; and such other matters as justice may require ( California Water Code Section 13385).
2. A hearing will be scheduled within 60 days unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive that right, please sign and return the waiver, along with a check made payable to the *State Water Resources Control Board* for the amount of civil liability to the Regional Board within 15 days of the date of this Complaint.

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GARY M. CARLTON, Executive Officer

4 August 1998

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(Date)

WAIVER

You may waive the right to a hearing and pay the Administrative Civil Liability as proposed. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons an opportunity to comment on this action. If you wish to waive the hearing, an authorized person must check and sign the waiver and return the waiver to the Executive Officer by **15 August 1998** along with a check made payable to the *State Water Resources Control Board* in the amount of civil liability.

I agree to waive my right to a hearing before the Regional Board and to remit ten thousand dollars (\$10,000) for the Civil Liability imposed.

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Signature

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Title

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Date

JFR:tch